

EXHIBIT A

PART 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ORIGINAL

TINA LINDQUIST,)
Plaintiff,)
vs.) No. 04-249E
HEIM, L.P.,)
Defendants.)

The video deposition of RALPH L. BARNETT,
called for examination pursuant to the Rules of
Civil Procedure for the United States District
Courts pertaining to the taking of depositions,
taken before Patricia L. Wangler, a notary
public within and for the County of DuPage and
State of Illinois, at 33 North LaSalle Street,
Illinois, on the 6th day of April, 2006, at the
hour of 12:00 o'clock p.m.

Reported By: Patricia L. Wangler, CSR

License No.: 084-002417

1 APPEARANCES:

2 DALLAS W. HARTMAN, P.C., by

3 MR. DALLAS W. HARTMAN

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7 Representing the Plaintiff,

8

9 MEYER, DARRAGH, BUCKLER, BEBENEK &

10 ECK, P.L.L.C., by

11 PAUL R. ROBINSON

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14 Pittsburgh, PA 15219

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16 Representing the Defendant.

17

18 ALSO PRESENT:

19 MS. KAROLINA TESARSKI, Videographer.

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I N D E X

WITNESS	EXAMINATION
RALPH L. BARNETT	
By Mr. Robinson	5
By Mr. Hartman	243

E X H I B I T S

NUMBER	MARKED FOR ID
Barnett Deposition Exhibit	
A	58
B	58
C	87
D	100
E	113
F	163
G	246
H	246

1 THE VIDEOGRAPHER: My name is Karolina
2 Tesarski, legal video specialist with
3 McCorkle Court Reporters located at
4 200 North LaSalle Street, Suite 300, Chicago,
5 Illinois, 60601.

6 I am the camera operator on
7 April 6, 2006, for the videotaping of the
8 deposition of Ralph L. Barnett being taken at
9 33 North LaSalle, Chicago, Illinois, at the time
10 of 12:06 p.m., in the matter of Tina Lindquist,
11 Plaintiff, versus Heim, L.P., Defendant, filed
12 in the United States District Court,
13 Western District of Pennsylvania,
14 Case No. 04249E.

15 Will counsel please identify themselves
16 for the record beginning with plaintiff's
17 counsel.

18 MR. HARTMAN: I am Dallas Hartman. I
19 represent the Plaintiff, Tina Lindquist.

20 MR. ROBINSON: Good morning, Paul Robinson
21 representing the Defendant Heim, L.P.

22 THE VIDEOGRAPHER: Will the reporter please
23 identify herself and swear in the witness.

24 THE COURT REPORTER: My name is Patti

1 Wangler, McCorkle Court Reporters.

2 Raise your right hand please.

3 (Witness sworn.)

4 RALPH L. BARNETT,

5 called as a witness herein, having been first

6 duly sworn, was examined and testified as

7 follows:

8 EXAMINATION

9 BY MR. ROBINSON:

10 Q. It still is Professor Barnett; is that
11 correct?

12 A. It is.

13 Q. Professor Barnett, my name is Paul
14 Robinson. We met very briefly before we started
15 this deposition. As you know I represent
16 Heim, L.P., --

17 A. Yes.

18 Q. -- a company that has been sued by Tina
19 Lindquist as a result of a very serious, a
20 tragic accident that occurred back in
21 September of 2002 up in Corry, Pennsylvania.

22 A. Yes.

23 Q. Do you know where that is, sir?

24 A. I do.

1 Q. You have been identified as the
2 plaintiff's expert on the liability issues
3 relating to the press brake and foot control at
4 issue in this -- made at issue in this lawsuit
5 by Tina Lindquist and her counsel.

6 And we have asked and I appreciate you
7 coming in to give us a discovery deposition so
8 we can further inquire into the circumstances,
9 facts and opinions set forth in your report.

10 The most important thing I can tell
11 you -- I know you have given many depositions
12 before and testified at trial many times; is
13 that correct?

14 A. That is correct.

15 Q. Hopefully the others have told you this
16 too but in all sincerity the most important
17 thing I can tell you is that I want you to
18 understand my questions.

19 Sometimes I speak quickly. If for any
20 reason you have any trouble understanding my
21 questions, will you stop me and let me know that
22 so that I can do whatever it takes --

23 A. I will be glad to.

24 Q. -- to make sure that you understand it?

1 A. Yes.

2 Q. But I know you are very familiar with
3 the issues, and I have tried to get up to speed
4 myself on your past writings and your past
5 testimony so that I can speed this along as
6 quickly as I can.

7 We could be here for a long time if we
8 talk about all of your prior testimony. I don't
9 intend to do that.

10 Have you met Tina Lindquist?

11 A. I have.

12 Q. And how many times have you met Tina
13 Lindquist?

14 A. One time.

15 Q. Was that in Mr. Hartman's office?

16 A. It was.

17 Q. We talked with Mr. Ulmenstein this
18 morning and he had told us about a 15-minute
19 meeting or so with Tina Lindquist.

20 A. That was about it.

21 Q. Did you talk with her about the
22 accident?

23 A. Not really. The -- I was -- she was on
24 the verge of tears for the entire time, so it

1 was a -- it was mostly a social introduction so
2 that she would understand, you know, that she
3 had an expert working for her. The -- but we
4 didn't really go into any of the real testimony,
5 you know, that she -- that she had given.

6 I wasn't even sure at that time whether
7 she had given a deposition herself. So it was a
8 very tearful and nerve-racking thing for her, so
9 it was just a quiet introduction so that she
10 would understand that there were people who were
11 representing her interests.

12 Q. Did -- and you were one of those
13 people?

14 A. I was.

15 Q. Did she give you any information about
16 the happening of the accident?

17 A. Not really at that interview. It was
18 not -- you know, it was not for that purpose.

19 Q. And you have used the phrase "not
20 really" --

21 A. Right.

22 Q. -- and I just want to make sure I
23 understand what your testimony is. As you sit
24 here today do you remember her saying anything

1 at all?

2 A. The best that I can do is that she made
3 the statement to me that she doesn't set up the
4 press. Somebody set the thing up, told her what
5 to do, and to the best of her knowledge she
6 executed exactly what she was told to do and
7 wound up with this -- with this consequence.

8 Q. Okay.

9 A. Because I wanted to know whether or not
10 her training would have allowed her to do set up
11 of presses and whatnot.

12 She seemed rather young to be able to
13 do that, but I just wondered whether or not
14 the -- she could serve as a setup person, and,
15 you know, she is absolutely an operator and not
16 a setup person.

17 Q. And when you say setup person, would it
18 be accurate to say that you are referring to
19 the attachment of the tooling and dies to the
20 table and ram of the press brake?

21 A. Yes, and the selection of safety
22 devices and how they are set up.

23 Q. Okay. Anything else, sir, are you
24 including anything else in your reference to a

1 setup person?

2 A. No.

3 Q. I appreciate you clarifying the one
4 issue.

5 A. What happens is setup people deal with
6 the -- developing the infeed system, the outfeed
7 system, you know, for the press, the location of
8 parts, you know, in proximity to the machine,
9 they set up the procedures for operation, they
10 set up the safety devices and the procedures for
11 using the safety devices, and that constitutes
12 setup of the press.

13 They, of course, will make sure that
14 the -- that everything is operational before
15 they turn it over to an operator.

16 Q. And these -- are these setup people
17 employees of the employer at issue in this
18 particular case, Corry Manufacturing?

19 A. Yes, I didn't see any real deviation
20 from what is always done in the industry and
21 what was done with Corry.

22 Q. Did you ever visit the Corry plant?

23 A. No.

24 Q. Have you ever talked with any of the

1 people that were working with Tina Lindquist
2 that day?

3 A. No.

4 Q. Did you ever speak with anyone that was
5 an employee of the plant regarding the setup of
6 this particular press brake?

7 A. No.

8 Q. Would you agree that the machine that
9 we are talking about in this lawsuit is
10 preferably referred to a press brake, Corry
11 press brake?

12 A. I would, yes.

13 Q. Which -- do you have a preference as
14 to --

15 A. It a press brake.

16 Q. And did Tina Lindquist at any time ever
17 tell you how her -- how the machine came to be
18 activated?

19 A. No.

20 Q. Did she tell you that she didn't know?

21 A. No, we just didn't go into it one way
22 or another.

23 Q. Have you reviewed Tina Lindquist's
24 deposition transcript?

1 A. I did but it has been a while and I
2 couldn't review it again last night because
3 the -- you know, the file was sort of divided up
4 between Mr. Ulmenstein and myself, and that's
5 one of the -- one of the summaries and things
6 and depositions that I didn't get. I have a
7 part of the file with me that I didn't have that
8 to rereview last night.

9 Q. And is this a part of the original file
10 so are these original file materials in front of
11 you today?

12 A. I don't even know what the phrase
13 "original materials" means so you will have to
14 explain that to me.

15 Q. Are they the first copy of the
16 documents that came into your possession, or
17 have they been copied at some point such that
18 the same documents would exist back in the
19 office?

20 A. They may be copies of documents we have
21 back in the office. I -- yesterday when I met
22 with Mr. Hartman, he asked for the B11.3
23 standards which are the standards for press
24 brakes, and another copy was run off for him.

1 And I think I have one of the copies that was
2 run off, you know, yesterday, so I am sure I
3 have both documents that were originally
4 furnished and copies of documents. I am sure it
5 is a combination.

6 Q. Okay. Do you have a memory -- strike
7 that.

8 Did you read the entire deposition
9 transcript of Tina Lindquist?

10 A. Yes, I did, at one time.

11 Q. Did you prepare a summary of that
12 transcript?

13 A. No, Matt Ulmenstein did the summary.

14 Q. And the plaintiffs were under a court
15 order to bring -- to provide us with a copy of
16 the -- all of the file materials. And we have
17 learned today that certain materials were not
18 provided to us before today.

19 A. Well, I am a little surprised to hear
20 that because yesterday when I was asking Matt,
21 you know, what is it that I should bring --

22 Q. For the record Matt --

23 A. -- he said -- Matt Ulmenstein, he said
24 you don't have to bring anything because I made

1 a copy of the entire file and sent that on. And
2 I questioned him about only one item. I said,
3 since we did the file, we had discovered a case
4 in our billing, there was a notation in our
5 billing records about something that I had
6 looked at for Rousselle and that you had made a
7 request for that.

8 I said was that sent ahead or do I have
9 to bring that now? He said, No, that was also
10 sent. So I am under the impression that our
11 entire file has been sent to you.

12 Q. Okay, well, that impression is
13 incorrect, and it is now known by everyone in
14 the room to be incorrect.

15 A. Okay.

16 MR. ROBINSON: Do you have Exhibit A from
17 Mr. Ulmenstein's deposition. Thank you very
18 much, Patti.

19 BY MR. ROBINSON:

20 Q. What we have marked as Exhibit A is a
21 complete copy of all of the materials that have
22 been sent to me exclusive of the videotape of
23 the inspection of the machine that has been
24 represented to be a complete copy of all the

1 file materials less discovery that has been
2 submitted between the parties and deposition
3 transcripts, things that we certainly would have
4 in our file already.

5 A. I see.

6 Q. And in this packet of documents that
7 are no deposition summaries. That's one item
8 that we know has not been provided to us.

9 A. I see. Well, what happens is he gave
10 me two deposition summaries last night and -- of
11 the corporate designees, so I have two
12 deposition summaries, but I don't have the
13 deposition summary of the plaintiff, so I have
14 those with me, the -- and I assume those were
15 sent to you.

16 Q. Okay. One other thing I noticed that
17 was not in here are notes. And I had asked
18 Mr. Ulmenstein whether he takes notes, he
19 mentioned he may have had a dozen or so
20 conversations with Mr. Hartman and whether or
21 not he takes notes, and he said he will on
22 occasion, he has no memory one or the other
23 doing it in this case. It may have been
24 disposed of if he did.

1 How about yourself, do you typically
2 take notes? I personally as you can see here
3 take many, many notes in the life of a case.

4 A. No, I don't normally take notes, but I
5 sometimes make notations. And -- for example,
6 when you read the deposition summaries of
7 Mr. Z-A-J-D-E-L and Mr. Mase, there are places
8 where I put stars and things in red, and so
9 that's a typical thing that I do on deposition
10 summaries.

11 And the -- normally if I will read an
12 expert's report, I will make notes on an
13 expert's report. And I have not done this, but
14 Matt Ulmenstein has made notations on the expert
15 reports, and I have his reports with the
16 notations with me.

17 Q. Okay, that's something else we haven't
18 been provided with. And this is part of what
19 the topic I am addressing as you probably can
20 tell, is I am trying to find out what we have
21 not been provided with following the court's
22 order for the plaintiffs to produce all of the
23 file materials. Did you know that Tina
24 Lindquist's attorney objected to producing the

1 entire file of Triodyne?

2 A. I have no knowledge one way or the
3 other.

4 Q. Do you know any of reason why there
5 would be an objection to producing the entire
6 file of Triodyne?

7 A. Absolutely not. As a matter of fact,
8 one of the reasons why I like to have the
9 depositions at my facility rather than yours is
10 because I instantly straighten all that out. If
11 you need something that somebody has overlooked,
12 I have it there. There is three Bankers Boxes
13 of stuff, and I will always have it there.

14 Q. Okay, that's typically done, you
15 produce your entire file; isn't it?

16 A. I would say that's not typically done.
17 I normally never produce the depositions. You
18 know, I will have 25 depositions in a case, you
19 know, that are this big, and I don't fly to
20 California with them.

21 Q. I misspoke. It is typically the case
22 that you would produce all nondiscovery type
23 items that were generated by your firm to the
24 other side before your deposition?

1 A. Absolutely. What happens in the
2 discovery process that all parties are entitled
3 to see everything. And we -- we support that
4 notion and usually when it is not done, it is
5 because of procedural things, it is not because
6 somebody doesn't want you to see something.

7 It is just because requests, you know,
8 there is one document, five people want to look
9 at it, the -- and so it is always things of that
10 type that you don't get it all at one time.

11 And it is not because anything is
12 hidden. The -- you know, we have now gone, you
13 know, three or four decades into this business,
14 and full discovery, you know, is where we have
15 all come to in this process and I support that.

16 Q. So you don't have any explanation as to
17 why there was a refusal to produce the entire
18 file?

19 A. I didn't know that there is a refusal,
20 but there is certainly nothing that I would not
21 show you.

22 Q. Do you have a copy of your report?

23 A. Yes, I do.

24 Q. I will be going through that at various

1 points today as well as some other documents
2 that I will show to you. I want to see if I can
3 state the gist of your opinion --

4 A. All right.

5 Q. -- so that we can have a working
6 knowledge of what that is. Is it your opinion
7 that the foot control that was being used by
8 Tina Lindquist at the time of her injury was
9 defective because it did not have a gate on the
10 front of the foot control?

11 A. I think that's a complete statement of
12 the -- of my opinion.

13 Q. In reviewing your report I didn't
14 notice any other areas of defect that you were
15 claiming other than the one I just stated.

16 A. That's correct, but it is -- with the
17 only thing I would add to that is that I want
18 the same footswitch that was involved in this
19 accident with the addition of the gate because
20 Linemaster makes the -- everything else should
21 be there and the gate also should be -- you
22 know, should be added, and that's part of the
23 testing I did was with the full -- with the
24 Linemaster switch with the gate on it.

1 Q. So is it fair to say that the opinion,
2 the only opinion that you have expressed so far
3 in your report and the only opinion that you
4 intend to express to a jury and to the court
5 would be the one that I just stated relative to
6 the foot control that was being used by Tina
7 Lindquist being defective because it did not
8 have a gate on the front of it?

9 A. Right, and whatever ancillary things
10 support that, you know, the -- support that
11 opinion.

12 Q. And I want to make sure I understand --

13 A. Because I have done testing and I would
14 want to show them the testing, but it is all
15 based on that one conclusion.

16 Q. So you are saying that there are other
17 facts --

18 A. Yes.

19 Q. -- that you have gleaned that support
20 that opinion, that there is testing that you
21 have performed that supports that opinion. Is
22 there anything else that is ancillary that
23 supports that opinion?

24 And I want to make sure I include your

1 review of materials. I certainly understand
2 that you have reviewed materials in coming to
3 your opinion. I just want to make sure that
4 there is no misunderstanding at any time after
5 today that I fully know the -- and my client
6 fully knows the opinion that you are expressing.
7 And that's the one I have already stated.

8 A. Look, I will just quickly go through
9 the -- my opinion thing that I think you have
10 stated it.

11 Q. I don't want you to read into your
12 report. I want to make this go a little more
13 quickly than that. I have read your report. I
14 just want to make sure we are on the same page
15 with regard to your opinion.

16 A. I think we -- you stated it very
17 succinctly.

18 Q. Thank you, sir. Have you ever given
19 that opinion before?

20 A. I don't really think so.

21 Q. Okay. We have been looking into your
22 prior testimony to make sure that we understand
23 your history and your knowledge and it is
24 overwhelming, may be an appropriate word, but

1 there is a lot of it.

2 One of the items I saw was that you
3 have testified for the past 30 years?

4 A. Yes, since 1969.

5 Q. Approaching 40 years.

6 A. Yes.

7 Q. 37 I suppose?

8 A. Right, right.

9 Q. Over 3,000 deposition -- depositions?

10 A. Right, it is between now 3,000 and
11 4,000 depositions.

12 Q. Do you keep track of them all?

13 A. Well, in a vague way. When I started,
14 we didn't do that. But now what happens is that
15 there is a federal rule that has asked experts
16 to keep track of their deposition and trial
17 testimony. So in the last year since that has
18 been in effect we have complete details of all
19 of the -- of all of that.

20 Q. And that's more recent, is it four
21 years -- the time period escaped me. Have you
22 kept them throughout all of your profession --

23 A. No.

24 Q. -- and opinion testimony?

1 A. No, I haven't. And the --

2 Q. I am wondering how you get to the
3 number?

4 A. Well, because what was happening is
5 that I have been asked the question at every
6 deposition and every trial since I began, you
7 know, 37 years ago, and so I keep accumulating
8 the number, and although I can't give you the --
9 you know, the number it is 3,122, it is over
10 3,000, the -- and there is not a question about
11 that.

12 You can't physically house them because
13 the testimony is a couple inches thick on each
14 document and you multiply that by 3,000, the
15 room we are in is not large enough to hold all
16 the testimony.

17 Q. Have you ever thought of compiling it
18 onto computer disks?

19 A. When we did decide to do that, it was
20 already -- you know, when I started out, there
21 wasn't even such a thing as a computer disk, so
22 it is too late for that.

23 Q. Well, you understand there are scanning
24 capabilities --

1 A. But I don't have the things to scan is
2 the problem.

3 Q. That's what I wanted to know.

4 Now, on the prior depositions do you
5 have any type of summary of the substance of
6 your opinions or the products that you were
7 addressing throughout that testimony?

8 A. No, I haven't.

9 Q. It is up here?

10 A. It is up here.

11 Q. And I have seen you answer the types of
12 questions about your past testimony in other
13 cases, and I will refer you to similar type of
14 questions.

15 One of my goals here as you might
16 expect is for me not to have to pull out all
17 those transcripts at a later point but to amass
18 them altogether and hopefully get everything out
19 that you have testified under oath before, put
20 into one workable transcript so we can have --

21 A. Right.

22 Q. -- something manageable.

23 A. We would have to always make an
24 estimate of the things because there is no

1 possible way that that could be done, you know,
2 in an exact fashion.

3 Q. No, I understand. We mentioned the
4 deposition -- the depositions. I also
5 understand you have testified at trial in excess
6 of 500 times?

7 A. Yes.

8 Q. Do you have a current tally of that
9 number?

10 A. No, I don't. It is just an estimate.
11 But, you know, since this thing -- since this
12 federal rule has been put in, we now keep real
13 track of that and so the -- I produce that at
14 every deposition, at least a four year -- see, I
15 have in front of me April 5th, 2006, back to
16 April 9th, 2002. And between those two dates I
17 have every trial and every deposition listed.
18 And that's now done for all of my people and for
19 myself and so now we keep track of it.

20 Q. Well, is there any discussion as to
21 what the product was in your summary?

22 A. No.

23 Q. Okay. And is there any reference to
24 the opinion that you addressed?

1 A. No.

2 Q. Okay. That's up here and in your prior
3 depositions?

4 A. Pretty much.

5 Q. I take it you have also in addition to
6 depositions and in addition to trial testimony
7 have submitted reports?

8 A. Right.

9 Q. That as we know typically precede your
10 deposition?

11 A. Right.

12 Q. And certainly precede the trial.

13 Would it be fair to say that you
14 authored more reports than the number of
15 depositions you have given?

16 A. If I had to make an estimate, I would
17 say there is 20,000 reports. We have done
18 32,000 cases at Triodyne. I have other people
19 who have written reports, but I certainly have
20 authored 20,000 I would guess.

21 Q. And I understand you have given
22 testimony concerning a number of different
23 machines?

24 A. Right, because I am -- I am -- my firm

1 and my background is all mechanical engineering,
2 and so in the field of mechanical engineering I
3 have testified on several thousand products
4 because I cover 2,000 products as a professor.
5 In order to get out of Illinois Institute of
6 Technology with a bachelor's degree in
7 mechanical engineering you see 2,000 products,
8 so certainly every one of those, you know,
9 the -- I have testified about, have done
10 research on most of them, but it is a larger
11 number than that, but they are all mechanical
12 products.

13 Q. I understand you have testified for the
14 plaintiffs' side of the cases and for the
15 defense side of the cases?

16 A. Yes.

17 Q. I didn't see an easy reference. Have
18 you broken it down? Have you any idea as to
19 percentages?

20 A. 50/50, we hold it at that.

21 Q. What do you mean you hold it at that?

22 A. We make sure that we stay 50/50 in
23 terms of representation. And if I find we are
24 drifting off of that, I call my friends either

1 in the plaintiffs' bar or the defense bar and I
2 ask them for more cases, you know, the -- so
3 that it comes up to 50/50.

4 You go through my -- this list that I
5 am going to give you today, you know, you will
6 probably find it is really close to 50/50.

7 Q. And I believe this list that you
8 referred to would have been already provided to
9 us as required by the rules. Actually it
10 wasn't, we then asked for it because we are
11 typically used to seeing it and then it was
12 subsequently provided to us.

13 A. Okay.

14 Q. You have represented press brake
15 manufacturers before?

16 A. Oh, yes.

17 Q. How many different press brake
18 manufacturers?

19 A. I tried to put together some summary
20 yesterday, Cincinnati, 12 cases;
21 Drayson Crump (phonetic), 36 cases; Pacific, 13
22 cases; Verson, 22 cases; Dearco, one case;
23 Wieson and Myles (phonetic), 1. There is a --
24 Federal Machinery, 2; YMG, a press company, 1;

1 and then a lot of press cases where I don't
2 represent the manufacturer, but I represent a
3 footswitch manufacturer or some component, but I
4 have done 111 press brake cases that I could
5 find.

6 Q. When you mentioned there are other
7 entities other than press brake manufacturers,
8 would that also include distributors?

9 A. Yes.

10 Q. Would those include --

11 A. An aircraft company will have an
12 accident on a press brake and I will represent
13 the aircraft company.

14 Q. Would those be included in the 111
15 or would those be in addition?

16 A. 111, 111 is the best that I could put
17 together.

18 Q. And how did you do that exercise?

19 A. The -- I asked my staff, you know,
20 to -- from whatever sources they have. We have
21 no buttons we can push to do this, so this
22 number could be larger, but it can't be smaller
23 than this.

24 Q. Those are the ones you located --

1 A. Right.

2 Q. -- or your staff located?

3 A. Exactly.

4 Q. How about cases where you represent
5 plaintiffs against press brake manufacturers,
6 let's use the 111, against those entities, how
7 many cases have you had where you were opposed
8 to the manufacturers, distributors, other
9 entities in the industry I think is how you said
10 it?

11 A. I don't know how it is broken up, but
12 in the 111 there are both plaintiff and defense
13 cases.

14 Q. Do you have any idea as to the ratio?

15 A. It will be a -- predominantly defense
16 cases because the code of ethics, you know,
17 the -- won't allow you to -- if you have the
18 same concept, you know, if I do a concept for
19 Verson Press, I can't testify against Verson
20 Press on that same concept.

21 So when I represent Ford Motor Company
22 on tires, I don't take cases against them on
23 tires. I could take it against them, you know,
24 on roof crushing, which I haven't done any work

1 on roof crushing, but I can't take a case
2 against tires. That's how the engineer code of
3 ethics works.

4 Q. Do you know of any press brake
5 manufacturers that you have been adverse to
6 because of your involvement on behalf of a
7 plaintiff?

8 A. I just haven't got the memory of --
9 there is a number of foreign machines that I
10 have not represented and so I have -- I think
11 Dearco is a plaintiff's case, against Dearco, I
12 think Wieson and Myles is a plaintiff's case
13 against the manufacturer, there is a German
14 company M-U-H-E, and then O-N-D, Bender and
15 Machine, and that's a plaintiff's case against
16 them. I think the YMG case is against that
17 company, so the --

18 Q. Those are the single cases I think you
19 are pointing out from your list?

20 A. Yes, exactly.

21 Q. So there are 4 there of the 111?

22 A. Right.

23 Q. Have you ever represented a plaintiff
24 in a case adverse to an American manufacturer of

1 press brakes?

2 A. I just -- I don't remember. I don't
3 remember.

4 Q. You can't think of any today?

5 A. Right, I would have to really look at
6 that to see.

7 Q. Would you have any records available to
8 you? When you say I have to look at it, do you
9 just assume there are records?

10 A. Well, I have to talk to the project
11 engineers and see what they remember because I
12 don't have this computerized, this is not
13 computerized.

14 Q. And I am just trying to learn how it
15 would be that you would go about doing such a
16 thing.

17 A. Right. At one time we were going to
18 put together a system like this and it was
19 \$2 1/2 million to put that together and it is
20 \$2 1/2 million that doesn't serve any real
21 purpose except to make defense and plaintiff's
22 attorneys happy at depositions of this kind.

23 Q. What was 2 1/2 million?

24 A. 2 1/2 million to put together my work

1 so that you could go ahead and answer questions,
2 what was the plaintiffs, what were the defense,
3 what was your position on the cases, who can
4 you -- you know, that sort of strategic
5 information.

6 Q. Did you get more than one quote on that
7 number?

8 A. It was from Beth Hamilton who did the
9 work and said, you have to be kidding. You
10 know, the -- and said it is \$2 1/2 million to
11 do this.

12 Q. Did you get more than one quote?

13 A. No, that's from my head librarian at
14 that time.

15 Q. Is she still with you?

16 A. She is not with any of us.

17 Q. Yeah, okay.

18 Have you also represented foot control
19 manufacturers?

20 A. Oh, yes.

21 Q. And can you list for us. I have seen a
22 list. I could probably go through it and
23 make -- see -- let's do it that way.

24 A. I can could try and help you.

1 Linemaster, you know, Allen-Bradley, Reese,
2 Square D, the -- those are ones that I can
3 remember now.

4 Q. Clark Controller?

5 A. What's that again?

6 Q. Clark Controller?

7 A. Absolutely.

8 Q. Allen-Bradley, Linemaster, Clark
9 Controller, Square D, Reese, anyone else?

10 A. I am sure there is others, but that's
11 what I can think of.

12 Q. If you think of any today, feel free if
13 it pops into your mind to let me know.

14 A. I will do that, I will do that.

15 Q. Have you ever represented a plaintiff
16 adverse, similar question as I did with the
17 press brakes, adverse to a foot control
18 manufacturer?

19 A. I don't really recall, a plaintiff
20 against a switch manufacturer.

21 Q. Do you call them footswitches or foot
22 controls?

23 A. I call them both, but the standard for
24 press brakes call the switches that are electric

1 and pneumatic, they call them foot controls, and
2 then there is foot pedals, you know, that
3 they --

4 Q. Treadles?

5 A. -- which we call pedals for mechanical,
6 and treadles is another mechanical, but they are
7 really long bars in front of the machine as
8 opposed to a thing that's about the size of your
9 shoe.

10 Q. What do you call the device that you
11 believe Tina Lindquist was using at the time of
12 her injury?

13 A. That would be a foot control.

14 Q. I want to make sure I have the -- we
15 use the same terminology because as you point
16 out, there are differences depending upon which
17 term you use; right?

18 A. Absolutely. And you will have to watch
19 me because the formalism imposed by standards
20 has -- is -- does not mean the entire industry
21 calls everything by the same -- by the same
22 names.

23 Q. In this case alone I have heard many,
24 many different terminology used.

1 A. Right, foot actuating devices, and we
2 have a whole group of things, but so that the
3 jury can follow what we are dealing with, you
4 and I will do our best to try to call things by
5 one name that everybody is using so as not to
6 confuse anybody more than we have to.

7 Q. Right, I appreciate that.

8 Have you ever in the -- just to
9 complete I guess the similar types of questions,
10 how many cases do you estimate, sir, that you
11 have handled on behalf of the foot control
12 industry?

13 You mentioned the companies involved
14 now, the similar question with the 111 and the
15 press brakes, how many times have you defended
16 foot controls?

17 A. I didn't make an attempt to find that
18 out. I just looked at punch presses, you know,
19 mechanical presses and press brakes is all I
20 looked at, but I don't know.

21 Q. Give it to me this way then, for
22 Allen-Bradley give me a minimum number that you
23 know that you represented them on.

24 A. A dozen.

1 Q. And when I say represented them on, I
2 am referring to performed any work, not
3 necessarily been deposed but been retained.

4 A. Yes, certainly a dozen.

5 Q. Linemaster?

6 A. I would also guess a dozen.

7 Q. Clark Controller?

8 A. I would think that would be a
9 half a dozen.

10 Q. Square D?

11 A. I would guess a half a dozen.

12 Q. Do you know Norm Wetlan (phonetic)?

13 A. I know who he is.

14 Q. How about Reese?

15 A. Reese, I think it is about -- also
16 about a half a dozen, maybe four.

17 Q. Roughly I have 42, over --

18 A. Oh, sure.

19 Q. Do you feel very comfortable?

20 A. Oh, absolutely.

21 Q. Have you represented foot control
22 manufacturers against claims of defects with
23 those foot controls where the foot control at
24 issue did not have a gate on the front?

1 A. Oh, certainly, certainly.

2 Q. And how many times would that be
3 approximately?

4 A. I don't know. I have no way of
5 knowing.

6 Q. Do you recall maybe the converse, how
7 many times of those 40 plus you represented a
8 foot control manufacturer where there was a
9 gate?

10 A. Well, I think in almost every
11 Allen-Bradley case there was a gate, so I
12 represented, you know, because of the mousetrap
13 design. I have represented a lot of people with
14 the gate.

15 But my position -- see, I have a
16 position that doesn't allow -- that doesn't hold
17 a footswitch manufacturer responsible for
18 selecting the right footswitch for a piece of
19 machinery.

20 Q. What do you mean by that?

21 A. Well, what happens is is that somebody
22 will have a piece of machinery and blame a
23 footswitch manufacturer for furnishing the wrong
24 footswitch for that machine. And it turns out

1 the footswitch manufacturers have absolutely no
2 idea what it is that they have to do for a
3 particular machine. It is completely outside of
4 their purview. And so what I have done is
5 represented what those manufacturers do, the
6 menu that they provide and that it is the
7 responsibility of the machine manufacturers to
8 select from their menu those footswitches --
9 footswitches or foot controls or foot pedals or
10 foot treadles which are -- you know, which makes
11 some sense for their machine.

12 It is a drop forge, you know, if it is
13 a sewing machine, if it is a press brake or a --
14 a punch press, all of these things require
15 different kinds of switches or pedals or foot
16 controls depending on what it is.

17 And there is not a chance -- you know,
18 when -- Allen-Bradley is one of the largest
19 manufacturers of electrical devices in this
20 country, you know. I met with their staff and
21 so many occasions that, you know, I can't even
22 bring to tell you. And that's just a joke, they
23 have not a clue what kind of a foot, you know,
24 control, that they shouldn't send out for a

1 given machine. That's why they retain me.

2 Q. Is part of that reason because it
3 depends on what type of use is being put to that
4 machine?

5 A. Exactly, but it is more than that, is
6 that they are experts on the manufacturer of
7 foot controls. They are not experts on every
8 machine that we have extent in the
9 United States, you see, so they just don't have
10 the expertise to do a power press, the expertise
11 to do a press brake, the expertise to do a
12 sewing machine.

13 They don't know how you are going to
14 use, what the machines -- how you are going to
15 use the machines and what are the requirements
16 for every machine.

17 And there are -- it's really amazing.
18 I have -- you know, if I show you a foot control
19 that has absolutely no guard on it at all, and I
20 will show you it is the optimum control because
21 it is used for an emergency stop, you want to be
22 able to hit it from every direction, sort of
23 like the control we use in San Francisco on
24 those -- the streetcars where a man is clanging,

1 he keeps hitting the control, you know, as a
2 clanging thing, he wants to be able to hit it
3 from every direction, you don't put a cover on
4 such a control, you want him to be able to get
5 to it.

6 And if you use that, for example, in a
7 punch press operation, it would be the most
8 dreadful control in the world. The -- it
9 depends on what you are trying to do.

10 Q. What -- can you give me a percentage of
11 the number of cases that -- of the ones where
12 you have represented the foot control industry,
13 the number of cases that would include a gate,
14 the number of cases that would not involve a
15 gate?

16 A. I have no idea.

17 Q. I take it from what you are saying that
18 you have claimed in your representation of the
19 injury that --

20 A. Excuse me, I do have an idea.

21 Q. Great.

22 A. In almost every case that I have had
23 against the foot control people every one of
24 them wants the mousetrap device. I don't care

1 what they furnished, they all say it should have
2 been the mousetrap design which is the one by
3 Allen-Bradley with this drawbridge concept.

4 Q. Who said they wanted it?

5 A. That's the plaintiff's bar.

6 Q. And you have been on the industry side
7 representing the foot control industry's
8 position?

9 A. Right.

10 Q. Saying it was not necessary?

11 A. Well, it depends on what, you know,
12 what machine is involved.

13 Q. And what use is being involved of that
14 machine?

15 A. Exactly, exactly.

16 Q. Okay. Have you represented press brake
17 manufacturers where the claim being made against
18 them is that they supplied a defective foot
19 control with their press brake?

20 A. I don't recall that being the issue in
21 the press brake cases that I have done.

22 Q. Have you represented -- by the way,
23 111, is that purely press brakes, or is that
24 power presses included?

1 A. Only press brakes. Power presses is a
2 much, much bigger number.

3 Q. What would that number be?

4 A. 644. Obviously I looked that up, you
5 know. I had my staff work on that yesterday.
6 There is no way in the world I would remember
7 that by myself.

8 Q. And would the same be true that the
9 significant number of those would also be for
10 the power press manufacturers and not for the
11 plaintiffs?

12 A. That's right. The -- but it's -- the
13 majority of them are, but I have done a huge
14 number of, you know, plaintiffs' cases on power
15 presses. I have active cases now.

16 Q. Have you represented the power press
17 industry in defense of claims that the foot
18 control that was supplied with those power
19 presses was defective?

20 A. Absolutely.

21 Q. Have you ever defended in that
22 situation where you were representing either a
23 press brake manufacturer or a power press
24 manufacturer where the claim is that the foot

1 control that was supplied renders it defective?

2 A. Yes.

3 Q. Have you ever defended a foot control
4 that did not have a gate?

5 A. Often.

6 Q. Give me a number of occasions.

7 A. I can't --

8 Q. Just general. I just want to see if we
9 can break it down at all.

10 A. The -- in the power press things it has
11 got to be hundreds of times where the people,
12 when they have a -- an accidental activation of
13 a foot control would -- the plaintiff's position
14 was that you should use the Allen-Bradley
15 mousetrap design.

16 And on those the -- in every one of
17 those cases I would argue that the -- unless you
18 are using the machine on continuous, the single
19 stroke applications it is the absolute worst
20 possible design that you can have.

21 Q. Can you tell us why that is.

22 A. Yes, because it -- it almost forces you
23 to ride the pedal and that's the --

24 Q. Go ahead.

1 A. Riding the pedal means that -- it is
2 like carrying a gun around with your finger on
3 the trigger all the time. And the -- so if I am
4 standing in front of a machine and I have my
5 foot over the pedal so I have raised my foot up
6 and I sneeze or I reach forward or I get tired
7 or somebody pushes me from the back, every one
8 of those things puts pressure on the pedal.

9 And when we started with this thing,
10 those machines, those power presses were a full
11 revolution, what is called a full revolution
12 clutch. You touch the pedal and you get a full
13 stroke. You just touch it, just like this, and
14 you get a full stroke. So it was devastating.
15 It was devastating.

16 The full stroke is so fast that it is
17 beyond your reaction time. There is no chance
18 that you could escape because by the time you
19 perceive what's going on, cognitively figure out
20 what you want to do and then execute, you get a
21 removal of your hand or some dodging method that
22 you have, your hand is already cut off. So
23 the -- it is not just that I have written on
24 this thing, but I advised every one of the press